

December 27, 2017

ERIE COUNTY COUNCIL – Special Meeting

Chairman Breneman called to order a Special Meeting of the Erie County Council at 12:00 p.m. at the Erie County Council Chambers, 140 West 6th Street, Room 117, Erie, PA. Following the Pledge of Allegiance, Mrs. Loll read the following prayer/invocation:

“We have been called together at this time of the year to clear our lives, restore and renew. When problems appear, and solutions are elusive, we ask for patience to build toward resolutions. Sometimes the situation seems overshadowing or unimportant, we ask for strength to use our experience and not be disillusioned to bring all to the correct end. To restore balance in our lives with new eyes and celebrate what has been done, what we are doing, and what we will do. We ask for guidance in his name Jesus Christ. Amen.”.

Roll Call

The County Clerk called the roll:

- Members Present:
- Mr. DiMattio (via telephone)
Mrs. Fatica (via telephone)
Dr. Foust
Mr. Horton
Mr. Leone
Mrs. Loll
Mr. Breneman
- Members Absent:
- None.
- Also Present:
- Douglas R. Smith, County Clerk
Sue Ellen Pasquale, Manager of Accounting
James Sparber, Director of Finance
Joseph Maloney, CPA
Thomas Talarico, Solicitor

Hearing of The Public None.

**Reports of
County Officials** None.

OLD BUSINESS None.

NEW BUSINESS

Dr. Foust moved to makes Ordinances 141, 142, and 143, 2017, to second readings. This was seconded by Mr. Horton.

Dr. Foust commented that in the end, these ordinances may pass by one vote, but to try to avoid everyone coming in for a second time later this week, five votes are needed to move them to a second reading. Dr. Foust asked if there is one Council member who would do that, then vote their conscience thereafter, he would appreciate it, but if not, Council can come back.

Chairman Breneman stated that if the votes are not there, he will be scheduling a second special meeting this week.

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The vote on the motion to move Ordinances 141 through 143, 2017, to a second reading was as follows:

Yes: Mr. DiMattio, Dr. Foust, Mr. Horton, Chairman Breneman

No: Mrs. Fatica, Mr. Leone, Mrs. Loll

Because five votes were needed, the motion failed.

Chairman Breneman stated another meeting would be scheduled.

NEW BUSINESS

Ord. 141, 2017 – Repeal of Ord. 124, 2017

Mr. Smith gave a first reading of Ordinance Number 141, 2017, “Repeal of Ordinance Number 124, 2017”.

Mr. Leone asked for clarification from Solicitor Talarico regarding Ordinance 142, 2017, since the County Executive is likely to veto it. He stated that the member asking for the repeal of that ordinance, must be on the prevailing side per Council’s rules. If the County Executive vetoes that ordinance, which he believes she will, doesn’t the majority who voted for the repeal in fact become the minority in the veto override scenario? And as the minority in that situation, have no right to bring the ordinance back.

A lengthy discussion ensued on the repeal of Ordinance 126, 2017, including discussion on the need for another meeting to provide for a second reading, as well as clarification on what exactly the repeal would mean.

Atty. Talarico stated that Council has the authority, they have to have a majority to do it, but they could repeal any ordinance that they’ve passed and for the majority to correct itself, they can’t simply change votes. He stated that Council can, under certain circumstances change a vote, and that André would have been able to do that had it not crossed the aisle. Attorney Talarico stated that since the County Executive has not signed the ordinance and not vetoed it yet she should be advised that Council intends to withdraw it, repeal it. With that in mind, though, if it made a mistake, Council as a whole could have made a mistake in any ordinance, and have the right to bring it back, but it has to go through the formal process. On the agenda now is a repeal of the ordinance that Council passed, but did not like, because the ECGRA Board now has nine members instead of seven, so they are coming back to repeal it – that’s on the agenda and Council is allowed to do that.

Chairman Breneman stated that he wanted to apologize because as Chairman, he did notice that Mr. Horton did take some time voting on it. He wasn’t sure if Mr. Horton was weighing the vote or was mistaken on the vote. Chairman Breneman felt it was his obligation to ensure that Council members were informed on that and he apologized to Councilman Horton because he felt it could be saving a headache in here. Chairman Breneman felt that all members of Council, regardless of how they feel this should go, should be respectful and cognizant of an intent, a desire, by any one member of this Council. He didn’t care what matter, and it’s probably a moot point now, but at any point if someone had made a mistake in voting on something, they should honestly be given the ability to rectify it. He stated that since none of these were moved to a second, and since he already stated that he will call a special meeting for another reading, he asked that Council continue on with the order unless there is a new question of the solicitor that hasn’t already been asked.

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Atty. Talarico stated there isn't any law on it, there's just an attempt to follow procedure the best they can and understand what the intent was behind Council rules and procedures laid out in the Administrative Code. Council acted last week, and since the County Executive has yet to act, this is really an attempt to allay doubt in anybody's mind that County Council intended to defeat that ordinance. That hypothetically, if the matter were to go to court, a judge would say they passed it, they came back the next week and repealed it, they changed it, they introduced a new ordinance – clearly Council intended to repeal it. There may be an argument that Council repealed it and she didn't get to sign it into law. That argument is out there, but this is the best that Council can do and Attorney Talarico felt that a Court would recognize that.

Mr. Leone reiterated that he is not opposed to Mr. Horton making a vote change within a meeting, but that this was the wrong way to go about it. Mr. Leone asked for clarification on the two ordinances (142 & 143); whether the County Executive has another fourteen days to veto those items should they pass.

Atty. Talarico confirmed that would be the case, though a veto of Item B on the agenda really wouldn't be necessary since Council's repeal would be consistent with a veto. It would all come down to her potential veto of the new NIRF ordinance.

**Ord. 142, 2017 –
Repeal of Ord.
126, 2017**

Mr. Smith gave a first reading of Ordinance Number 142, 2017, "Repeal of Ordinance Number 126, 2017."

**Ord. 143, 2017 –
Auth. Of Org. of
NIRF**

Mr. Smith gave a first reading of Ordinance Number 143, 2017, "Authorizing the Organization of the Neighborhood and Infrastructure Revitalization Fund (NIRF)".

Chairman Breneman stated that it would be his preference to have a meeting at noon on Friday, December 29th. He asked members of members if they were able to make that meeting.

Mr. Leone commented that according to the Home Rule Charter, it requires 72 hour notice to the public regarding the agenda. It will be next year for the 72 hours.

Attorney Talarico stated that the Home Rule Charter 72 hour rule is in regards to a regular meeting of Council. He clarified that it is in reference to the agenda, not notice to the public. Special meetings may be held at the call of the Chairman of Council.

Mr. Horton then wanted to apologize to his colleagues for his mistake at the last Council meeting which ran contrary to the rest of his votes. Mr. DiMattio sent it to him for signature and he sent it back. He stated that had he caught it that evening, the situation could have been rectified. He wanted to differentiate and acknowledge that Ordinances 142 and 143 are independent of his mistake.

The meeting then recessed at 12:23 p.m. to review the Administrative Code for guidance on scheduling the next meeting. The meeting was called back to order at 12:28 p.m.

Attorney Talarico clarified that a Special meeting can be called by the Chairman. The 72 hour agenda requirement is specifically for Regular meetings. As for public notice, there is no provision for public notice under the Administrative Code or the Home Rule Charter. He stated that it exists under the Public Notice law, which is 24 hours. Chairman Breneman then called a Special Meeting for Thursday, December 28, 2017 at 1:00 p.m.

There being no further business, the meeting then adjourned at 12:30 p.m.

Deneé M. Breter, Council Secretary